

Ram Niwas Todi and Another

Vs

Bibi Jabrunnissa and Others

Civil Appeal No. 2276 of 1987

(M. M. Punchhi, K. Venkataswami JJ)

06.08.1996

ORDER

1. Before the trial court it was admitted that the suit land measuring 41.5 decimals was homestead land and several houses of phoos (thatch) and tiles were constructed thereon, which were in occupation of the plaintiff-respondent since long, even prior to the gift Ex. 1 executed in her favour by her father-in-law. Since the parties were Mohammedans, an oral gift by a father-in-law to his daughter-in-law was permissible but here was one which was written but not registered. It could not, in any event, be said that in the presence thereof there was no oral gift. Significantly, it was followed by possession making the gift complete and that is the finding of all the three courts below.
2. The debate before the High Court centred around the erroneous premise that the gifted property was agricultural land to which the provisions of the Bihar Tenancy Act, 1885 as also the Bihar Land Reforms (Fixing of Ceiling Area and Acquisition of Surplus Land) Act got attracted. Even so, taking into account those provisions, the High Court came to the conclusion that the oral gift made by a Mohammedan would prevail over the provisions in the tenancy laws, which required occupancy rights to be transferred by means of a registered deed. We think that it was unnecessary for the High Court entering into such controversy and putting the tenancy laws at a disadvantage over Muslim personal law. Once it stood established that the property in dispute was house property, which included open spaces of land appurtenant and subservient thereto, to which the plaintiff-respondent was put in possession after an oral gift in her favour, that per se should have been enough to keep her suit decreed rejecting the pleas of the defendants-appellants that the gift was invalid, making the natural heirs of the deceased owner claim it by inheritance.
3. In this view of the matter we affirm the orders of the High Court to the extent to which we agree as to the validity of the gift on its own, denuding its judgment of the discussion on the tenancy laws. The appeal is accordingly dismissed. No costs.